IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 323 of 2002

For Approval and Signature:

HONOURABLE MR.JUSTICE C.K.BUCH

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1	Whether Reporters of Local Papers may be allowed to see the judgment ?	
2	To be referred to the Reporter or not ?	
3	Whether their Lordships wish to see the fair copy of the judgment ?	
4	Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?	
5	Whether it is to be circulated to the civil judge ?	

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RAJESHBHAI CHATURBHAI CHAUDHARY - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :

THROUGH JAIL for Appellant(s):1,MS NITA C BANKER for Appellant(s):1,
MR PD BHATE, LD.APP for Opponent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE C.K.BUCH

Date : 30/08/2007

ORAL JUDGMENT

1. Heard Ms.Nita Banker, learned counsel appearing for the appellant and Shri P.D. Bhate, learned Additional Public Prosecutor, appearing on behalf of the respondent-State.

2. This is an appeal preferred by the appellant-orig.accused under Section 374 of the Code of Criminal Procedure, 1973, challenging the judgment and order of conviction and sentence dated 14th February 2002 passed by the learned Extra Assistant Sessions Judge, Valsad at Navsari, in Sessions Case No.150 of 2000, whereby the learned trial Judge has held the appellant guilty for the charge of offence punishable under Sections 376 and 506(2) of the Indian Penal Code and sentenced him to undergo rigorous imprisonment for 07(seven) years and a fine of Rs.1000/-, in default of payment of fine shall undergo simple imprisonment for one year, for the offence punishable under Section 376 of the Indian Penal Code. So far as the offence punishable under Section 506(2) of the Indian Penal Code is concerned, the appellant is sentenced to undergo rigorous imprisonment for 03(three) years and a fine of Rs.500/- in default of payment of fine, he shall undergo simple imprisonment for one month. The learned trial

Judge has ordered both the sentences to run concurrently.

3. According to Ms.Nita Banker, learned counsel appearing for the appellant, the appellant has already undergone the substantive part of the imprisonment imposed by the learned trial Judge. According to her calculation, the substantive sentence imposed by the learned trial Judge might have been completed by 27th July 2007. The date of incident, according to the charge framed by the learned trial Judge and the evidence led by the prosecution is shown to be 27th July 2000, and the appellant was not granted bail. The appellant may have enjoyed, perhaps, the interim bail or other leaves but as this Court has not granted bail to the appellant even on admission of the appeal, she has reason to believe that he must have completed the period of sentence keeping in mind the statutory rules framed to grant remission by the Jail Authority.

4. Considering the totality of facts and circumstances of case emerging from record, she has not pressed the order of conviction recorded by the learned trial Judge. However, her submission is that one year's simple imprisonment imposed by the learned trial Judge as in default punishment for the offence punishable under Section 376 of the Indian Penal Code and one month's simple imprisonment as in default punishment for the offence punishable under Section 506(2) of the Indian Penal Code, may be reduced keeping in mind the poverty of the appellant and other aspects.

5. When the Court raised a query as to what is the special circumstance under which the amount of fine can be reduced; in response thereof, she has stated that on the date of offence the victim was the high-school going girl. On the date of her deposition, the victim has stated her age as 17 years. Her deposition is recorded in the year 2001 and the incident was of the year 2000 and so on

the date of deposition she was a matured and grown up girl and there is no big difference between the age of the appellant and the victim girl. So the indefault punishment if is reduced to three months, it would meet the ends of justice so far as the offence punishable under Section 376 of the Indian Penal Code is concerned; and in the same way, it may be reduced to 15 days simple imprisonment for non-payment of fine for the offence punishable under Section 506(2) of the Indian Penal Code.

6. Ms.D.S. Pandit, learned Additional Public Prosecutor, states that this Court may pass appropriate orders without reducing the substantive sentence imposed for the offence punishable under Section 376 of the Indian Penal Code.

7. In view of aforesaid observations and discussion, the present appeal is hereby partly allowed. The judgment and order of

conviction and sentence dated 14th February 2002 passed by the learned Extra Assistant Sessions Judge, Valsad at Navsari in Sessions Case No.150 of 2000 is upheld; and the sentence of fine imposed by the learned trial Judge is hereby modified and reduced to the extent that the appellant now shall undergo simple imprisonment for three months in default of payment of amount of fine for the offence punishable under Section 376 of the Indian Penal Code; and he shall also undergo simple imprisonment for one month in default of payment of amount of fine for the offence punishable under Section 506(2) of the Indian Penal Code. This indefault punishment, obviously, shall have to be served separately.

(C.K. Buch, J)

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